

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 37363

STATE OF IDAHO,)	2010 Unpublished Opinion No. 728
)	
Plaintiff-Respondent,)	Filed: December 2, 2010
)	
v.)	Stephen W. Kenyon, Clerk
)	
STEPHEN MICHAEL KILGORE,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Timothy Hansen, District Judge.

Order denying I.C.R. 35 motion for reduction of sentence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Justin M. Curtis, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

Before GUTIERREZ, Judge; GRATTON, Judge;
and MELANSON, Judge

PER CURIAM

Stephen Michael Kilgore was charged with lewd conduct with a minor under sixteen years of age. Pursuant to a plea agreement, Kilgore pled guilty to felony injury to a child. I.C. § 18-1501(1). The district court sentenced Kilgore to a unified term of ten years, with a minimum period of confinement of two years, but retained jurisdiction. Following Kilgore's participation in the rider program, the district court relinquished jurisdiction. Kilgore filed an I.C.R. 35 motion for reduction of his sentence, which the district court denied. Kilgore appeals.

A motion for reduction of sentence under I.C.R. 35 is essentially a plea for leniency, addressed to the sound discretion of the court. *State v. Knighton*, 143 Idaho 318, 319, 144 P.3d 23, 24 (2006); *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989). In presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of

new or additional information subsequently provided to the district court in support of the motion. *State v. Huffman*, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007). An appeal from the denial of a Rule 35 motion cannot be used as a vehicle to review the underlying sentence absent the presentation of new information. *Id.* Because no new information in support of Kilgore's Rule 35 motion was presented, review of the sentence by this Court is precluded. For the foregoing reasons, the district court's order denying Kilgore's Rule 35 motion is affirmed.